

Report on the Development of a Maine Building Rehabilitation Code

Maine State Planning Office
with assistance from the Maine Building Rehabilitation Code
Advisory Council appointed by
Governor Angus King

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Executive Summary

The State Planning Office and the Maine Building Rehabilitation Code (MBRC) Advisory Council worked for five months to identify policy concerns, begin reviewing and developing building standards, identify possible fiscal incentives, and identify possible conflicting federal, state, and local laws that inhibit renovation projects. All efforts were directed to try to make renovation projects easier and less expensive to accomplish, without compromising health or safety concerns.

The MBRC will be a standard specifically to govern work on and in existing buildings. For municipalities that already have a building code, this new code will provide an alternative to current codes, which are primarily designed for new construction. An MBRC may modify materials or structural requirements to reduce the cost of renovation, without compromising safety. *However, the best way to ensure the use of an MBRC is to create a model building code with a companion rehabilitation code.*

Findings

Cost of Renovation vs. New Construction.

- Anecdotal information shows that renovation can be more complex and sometimes more expensive than new construction in municipalities with building codes.
- Existing downtown buildings are generally underutilized.
- When new construction is less complex and/or less expensive than renovation, developers and builders will often opt for new construction.
- Developers that chose new construction in outlying areas over rehabilitation contribute to sprawl.

Need for Education and Training. Uniformity and predictability in enforcement are noted as two of the most important attributes of a building code. One important way to enhance these attributes is through education and training. However, without a statewide model building code with which to conduct training, training is impractical.

Need for Uniformity. A major concern of developers, architects, and others in the building trades is the variation in building codes from municipality to municipality.

- Approximately 72 municipalities have building codes.
- This represents roughly 53% of the population and the majority of existing buildings in Maine.
- The codes adopted by these municipalities range from the 1961 National Building Code to the 2000 International Building Code.
- Building designers are forced to customize each project to the varying local code, increasing project costs.

The lack of uniformity is contrary to the principle of making rehabilitation easier and less expensive.

Complex problem. The SPO was instructed to develop a rehabilitation code, with the assistance of an Advisory Council. Both the SPO and the Advisory Council have come to the conclusion that the creation of such a code is a complex undertaking requiring a minimum of an additional year. Creating a code requires:

- examining every technical standard in a MBRC to determine its appropriateness in Maine; and
- coordinating and re-evaluating the numerous existing state laws and rules that regulate construction and rehabilitation, and are seen by many as a major underlying problem; and
- outlining a method of adopting, updating, training, administering, and enforcing the code.

Recommendations

The choice of an MBRC should be part of a larger effort to adopt a model building code. Rehabilitation codes, like the proposed MBRC, are highly dependant on a full building code. The best way to ensure the use of a MBRC is to create a model building code with the MBRC as a companion rehabilitation code.

Reexamine the January 15, 1998, Report on the Desirability and Feasibility of a Model Municipal Building Code. Having a rehabilitation code makes more sense in the context of a model municipal building code. Coordination between a building code and a rehabilitation code is the best way to accomplish an integrated set of building standards that ensure public safety and make developing in a manner that accomplishes both public and private objectives possible. The recommendations of the 1998 report (Appendix A) would greatly increase both uniformity and building safety in the jurisdictions that adopt the models. The best way, and perhaps the only successful way, to create a MBRC is to create it in the context of creating a statewide model building code.

Select an optional model building code and an optional rehabilitation code created by a model code organization. SPO and the Advisory Council recommend that Maine consider a model code created either by the International Code Council or the National Fire Protection Association. Either model code will require some modification to best fit Maine's needs. The choice of which rehabilitation code to use should be based on the model building code chosen. Adopting a MBRC should be part of a larger effort to adopt a statewide model building code.

Absent a mandatory building code, a mandatory rehabilitation code does not make sense. The local adoption of the code should be voluntary, but once a municipality decides to adopt a rehabilitation code, the state model MBRC should be the only model municipalities may adopt. This will accomplish the uniformity between municipalities that is necessary to make rehabilitation projects easier and more economical than new construction.

Create a Code Board to coordinate a model building code and other existing state laws and rules. A Code Board might be a new board, an expanded authority of an existing board, an ombudsman instead of a full board, or some other format. Further study is necessary to determine which form would best serve Maine. However, it is clear that there needs to be a single entity responsible for model code updates, training, education, interpretation, coordination of other state laws and rules, and possibly appeals functions.

Identify ways to interface a rehabilitation code with current state laws and rules. State and federal laws and rules must be examined, re-evaluated, and properly harmonized with a MBRC to ensure efficient administration and interpretation.

Create fiscal incentives for municipalities to adopt the code. Fiscal incentives and other enticements for municipalities should be further studied. Fiscal incentives should include:

- Scoring preference for certain Community Development Block Grant programs.
- Scoring preference for Maine Downtown designation through the Downtown Center.
- Preference for funding on school rehabilitation projects through the Department of Education.
- State building location preference by the Bureau of General Services, in conjunction with statute.
- Scoring preference for the Brownfields program through the Department of Environmental Protection.
- Scoring preference for grant from the State Planning Office.
- Preference for Enhancement funding and other bicycle and pedestrian funds from the Department of Transportation.
- Access to funds from the state for training.
- Access to new grants for downtown building rehabilitation.
- Access to a set aside pot of funds in the Municipal Investment Trust Fund for grants or loans to enable downtown projects.

Authorize and fund SPO to follow up on these recommendations. The work necessary to complete this project is estimated to take at least an additional year. The work for this first five months was funded with existing resources, but additional work to complete the project will require additional funding.

Report on the Maine Building Rehabilitation Code

Legislative Charge

Resolves 2001, Chapter 29 (Appendix B), to Establish a Model Building Rehabilitation Code for the State instructed the State Planning Office to develop a model Maine building rehabilitation code. According to the Resolve, the purpose of the model code is to encourage the rehabilitation of existing buildings.

Specifically, the State Planning Office was to:

1. Develop a model code with assistance from the Advisory Council;
2. Develop options for providing fiscal incentives for municipalities to adopt the model code; and
3. Provide technical assistance and training in connection with the model code, to the extent funding is available; and
4. Draft legislation necessary to implement any recommendations.

The Advisory Council was a seventeen-member committee outlined in the Resolve, with thirteen appointed by the Governor and the remaining four appointed by four state agencies, the State Fire Marshal, the Department of Economic and Community Development, the Maine Historic Preservation Commission, and the State Planning Office. The Governor's appointees were from specified interest categories to ensure broad representation on the Council.

Why Create a Building Rehabilitation Code?

The Legislative Charge and Advisory Council mission above clearly show that the goal is to make the rehabilitation of existing buildings easier and less expensive, without compromising health and safety concerns. But is this really a problem in Maine that begs for a solution? Why aren't current building codes adequate?

Current building codes are generally designed for new construction. Meeting a hallway width requirement, elevator shaft size, railing height, or other standard is easy and has little impact on the cost of the project when building new. However, altering the structural members of an existing building to meet current standards is very costly and can make the difference between renovating an existing building and building new. This is especially frustrating when there may be an acceptable alternative to meeting new building standards.

Local officials and others have indicated that there is flexibility built into the current codes that allows for exceptions to be made creating a rehabilitation project that is reasonable. However, the flexibility described negatively impacts uniformity and predictability in the building and design process. Protracted negotiations that may vary from municipality to municipality or even within a municipality over time, increase the cost of rehabilitation and makes these projects less attractive to developers. An element of risk is introduced that the risk-adverse development community is often unwilling to take. The cost of a renovation becomes a moving target. The result --- abandonment of the renovation project for new construction, exacerbating sprawl if the new construction is in an outlying area.

A rehabilitation code is designed to establish standards and processes that the existing building owner can meet with limited risk and improved predictability. It will make rehabilitation both easier and more economical, increasing the likelihood that a developer will attempt a rehabilitation project instead of building new.

But how does a rehabilitation code relate to a building code? There is more detail later in this report, but a rehabilitation code is generally a subcode or companion code to a building code and is tightly integrated with the main code. The best way to ensure the use of a rehabilitation code is to create a model building code with a companion rehabilitation code. A January 1998 study completed by the SPO, entitled Report on the Desirability and Feasibility of a Model Municipal Building Code (Appendix A), provided a very detailed discussion of the creation of a voluntary model building code.

The Process

The State Planning Office hired Jeff Edelstein, of Edelstein and Associates, to facilitate the code creation process and the New Jersey Division of Codes and Standards to author the code and guide the Advisory Council through the code creation process. Both contractors were highly qualified.

The Advisory Council met a total of ten times in five months. Meetings were initially designed to discuss both policy issues and technical issues. However after three meetings it became obvious that using the New Jersey and Maryland model of creating a “homegrown” code was not the best option for Maine. At this point the New Jersey team felt they could no longer continue as a contractor on the project, since their work was funded by a grant that they had received to work with other jurisdictions to adopt a code similar to their code.

During the five months the Council meet with officials from New Jersey, Maryland, the International Code Council (ICC), and the National Fire Protection

Association (NFPA). Each of these groups has a rehabilitation code. New Jersey's code has been in use for nearly five years, Maryland's for six months, while ICC's and NFPA's codes are in their final draft form.

In addition to meeting with individuals from outside groups with rehabilitation codes, the SPO and Advisory Council met with representatives from the Maine Human Rights Commission staff, Alpha One (to discuss the Americans with Disabilities Act), State Fire Marshal's Office staff, and Maine State Housing Authority staff to discuss specific technical requirements in state law and building codes. Each of these groups, plus additional groups, will need to be involved in further discussion of a rehabilitation code.

There have been detailed discussions about accessibility issues, life safety issues, structural issues, and a number of other topics. But the time necessary to do a detailed, line by line review of the standards is not available nor is the funding available for a contractor to perform that task and walk the SPO and Advisory Council through it. Additional time and funding are necessary to allow the work to be properly completed.

However, the result of the process is this report, rather than a completed Maine Building Rehabilitation Code as had been expected by Resolves 2001, Chapter 29. Therefore the Advisory Council and SPO respectfully request the reauthorization of the work to complete a rehabilitation and requests minimal funding to complete the project.

For additional discussion and information on the process, please review the minutes of the Advisory Council's meetings attached to this report as Appendix C.

Advisory Council Mission and Guiding Principles

Early in the process, the Advisory Council outlined a mission statement and discussed guiding principles. The mission statement said:

The Maine Building Rehabilitation Code Advisory Council's mission is to make rehabilitation easier and less expensive, without reducing overall public health and safety through:

- development of a model building rehabilitation code; and
- recommendations for fiscal incentives to municipalities that adopt the code; and
- recommendations for other measures that further the mission.

In addition to this broad mission that generally mirrors the Legislative Resolve, the Council did some early work on identifying guiding principles for the project. Many of the principles did not have the full support of the Council, making those

that did have full support significantly more important. The principles that had full Council support were:

- The code should be available statewide.
- The code should be developed through stakeholder consensus.
- The code should create uniformity from municipality to municipality.
- The code should be adopted locally, but without local modification to the substance of the code.

The following principles had less than full Council support. They are in order of decreasing support. All of the principles listed had a majority support.

- The code should be friendly to the lay user, not just the professional user.
- Health and safety are paramount principles.
- The code must be predictable.
- The code should recognize home rule.
- The code should be compatible with other codes.
- Buildings should be left no less safe after a rehabilitation than before the rehabilitation.
- An owners interest in rehabilitation is not the time to require that the entire building be brought into compliance with current building code standards.
- A partial increase in the safety of a building is better than no increase.
- Rehabilitation requirements should be based on the overall scope of the project.

A “Homegrown” Code.

Maine reviewed two homegrown codes, each of which took approximately three years to develop.

- The New Jersey Rehabilitation Subcode – went into use in 1997. It is the winner of an Excellence in Government award in 1999 and is the only rehabilitation code to have been in use for more than a year in the U.S. This is a mandatory code. It has been extremely successful in New Jersey at increasing investment in existing buildings, but was created long before there were any alternatives to a homegrown code.
- The Maryland Building Rehabilitation Code – went into use on June 1, 2001. This is a voluntary code, adopted locally with or without amendment. If it’s adopted without amendment, significant financial incentives are available.

A “homegrown” code is one that is created, maintained, administered, interpreted, and enforced entirely by the state or jurisdiction in which it is used. Both New Jersey and Maryland have such a code, mostly because there was no alternative at the time they decided to create a rehabilitation code. New Jersey’s code has been in use since 1997 and was created over the three years prior to 1997. Maryland’s

code was created in the late 1990s and went into effect June 1, 2001. These initiatives in rehabilitation codes forced the issue onto the tables of the professional code writing groups. The International Code Council (a new organization formed by the merger of BOCA and two other code organizations) and the National Fire Protection Association have authored their own rehabilitation codes, both currently in final draft stages, integrated with their standard building codes.

The Advisory Council met with representatives from New Jersey, Maryland, the International Code Council (ICC) and the Building Officials and Code Administrators International, Inc (BOCA), and the National Fire Protection Association (NFPA). After meeting with each of these groups and going over the New Jersey code in some detail, the Advisory Council decided that the homegrown code had a number of drawbacks.

- A homegrown code must be created and maintained by the state in which it is used. Maine cannot afford to do this.
- A homegrown code must be interpreted by the state in which it is used and needs a centralized coordinator to assist with interpretation to ensure uniform statewide application.
- A homegrown code must be completely supported by the state in which it is used. There is no outside training available.
- A homegrown code does not have the political weight and authority of a code developed by a professional organization, even if the standards are largely equivalent.
- A homegrown code may not carry the same weight as a professionally developed code with outside organizations, such as insurance companies.

Based on these problems the Advisory Council dismissed the idea of a homegrown code and began investigating the codes that are now under development by the professional code organizations. The Advisory Council submitted formal questions to ICC and NFPA, and reviewed their responses in addition to having a formal presentation by both organizations on their product and services.

ICC or NFPA.

The International Code Council (ICC) and the National Fire Protection Association (NFPA) both have draft rehabilitation codes currently in progress. The ICC is the successor organization for the Building Officials and Code Administrators International (BOCA) and two other model code organizations. The model building code they use is the International Building Code (IBC), which replaces the older BOCA code. The NFPA, long known for its fire codes and electrical codes, has created a structural building code to compete with ICC. Both of the rehabilitation codes are built into the organizations respective building code. For ICC the rehabilitation code is called the International Existing Building

Code (IEBC) and is referenced in and coordinated with the IBC. The NFPA 5000 building code has Chapter 54 dedicated to regulating existing buildings.

Three main questions arose during the discussion of a choice of codes:

- Where will the code be housed and who will administer/enforce it?
- Which building code will be used?
- Which rehabilitation code will be used?

While these may seem like obvious questions, the SPO and the Advisory Council discovered that by answering any one of these questions, the answer to the other two became fairly obvious. This means that the decisions made by the SPO and the Advisory Council have the potential to influence the direction of codes for decades to come, intensifying the need to make a well reasoned decision.

If the ICC's rehabilitation code is chosen, then it makes sense that the building code in communities that want to use the rehabilitation code will adopt the accompanying building code and the code will be maintained, administered, and enforced at the local level. As noted in the Executive Summary, all municipal jurisdictions that currently have a code have a version of BOCA or the National Building Code, which were the basis for the International Building Code. BOCA is the building code that building inspectors are used to using.

If the NFPA rehabilitation code is chosen, then it makes sense that the NFPA 5000 building code will be adopted by the municipality. It also becomes more likely that the State Fire Marshal's Office would be more involved in maintaining the code and helping to administer or interpret the code. Fire Officials are more used to the NFPA format and content than building officials.

Complicating the choice of a building and rehabilitation code is the preference felt by the respective groups to the products and services of the model code organizations with which they are familiar. Fire officials have historically used NFPA and building officials have historically used BOCA (now the ICC). Coming to an agreement will be critical to create a code that is politically acceptable, and will therefore get used.

Because the three questions bulleted above are so tightly woven together, additional time is necessary to make a clear decision on which code is best for Maine, both technically and politically.

Training and Education.

Uniformity and predictability are the hallmarks of a code that will accomplish the objective of easier and more economical rehabilitation projects. There are two important ways to improve uniformity and predictability: 1) standard codes and 2) training on a standard code. The current code situation in Maine, each

municipality having its own relatively unique code, precludes effective training. With over a dozen versions of the BOCA code used in Maine it is impossible to create a meaningful training program, since the BOCA code has changed fairly dramatically over time.

Building officials need to have a clear understanding of the codes they administer and interpret, and they need to know how the myriad of state laws affecting local building codes are interpreted. Without ongoing training, building officials are often left to make their own individual interpretations, which may differ from other interpretations in other municipalities and may change over time within a single municipality. Building officials understandably make conservative interpretations where they are given leeway by the code to innovate. The concern about liability issues for building officials or design professionals when making an interpretation of a building code are real. If people or property are harmed after construction or renovation, one of the first questions asked in jurisdictions with codes is if the code was met. Evidence of this became even more obvious after the September 11, 2001, terrorist attacks and the subsequent media coverage of questions surrounding the possibility of corners having been cut in the construction of the World Trade Centers. High profile cases such as this only serve to make building officials less likely to produce liberal or innovative interpretations of a code.

A training manual with interpretations and examples which integrates code issues with other state laws is an important first step to creating a regulatory climate that maintains the benefits of a code and reduces the problem of variable interpretations. The creation of a manual could be accomplished in parallel with the creation of a code and would likely have benefits even if the code is never adopted. Training and education must be a major component of the effort to improve building codes in Maine.

Other state laws

There may be cases where Maine law has gone beyond Federal requirements or where Maine law inhibits renovation projects. In those cases, the laws may need to be re-evaluated, and the standards examined to determine:

1. whether they truly address the problem which precipitated adoption;
2. if there is an alternative that accomplishes the same objective in a manner more friendly to rehabilitation; or
3. if the law is really the in the best interest of Maine citizens as written and should be left unchanged, even in rehabilitation projects.

The January 1998 report, Report on the Desirability and Feasibility of a Model Municipal Building Code (Appendix A), details the laws that currently have an

impact on construction. Since 1998 additional legislation has been passed that affect construction, including additional elevator size requirements among others.

The review and analysis of these laws through a stakeholder group needs to be either a parallel effort to the creation of a rehabilitation building code or ideally should stand as its own effort. All of the participants on the Advisory Council concluded that, while the lack of a standard code is a major stumbling block to rehabilitation, the patchwork quilt of existing state laws is a significant problem. Each law must be individually examined and should ideally be integrated into a single package of construction or development laws under the umbrella of a single state oversight board, perhaps made up of a committee of state employees with expertise in each subject area. Improved coordination is critical.

Code Oversight Board

The suggestion that another state board be created will undoubtedly have detractors. SPO recognizes this and is loathe to recommend the creation of another bureaucracy. However, the need for an oversight Board, Committee, agency, ombudsman, or other entity that can coordinate existing laws, provide expert interpretation, amend and update any model codes created, possibly act as an appeals board for disputed rulings, and assist in the necessary educational components of any code program is critical. The entity would be tasked with providing training and education as a critical part of its mission to create uniformity and predictability.

Maine needs the one-stop shopping version of code and statutory administration. As has been repeated throughout this report, uniformity and predictability are the cornerstones of an effort to improve the attractiveness of rehabilitation. Without this Board, the uncoordinated and disparate efforts of state agencies combined with local codes and regulations will continue to plague the redevelopment of existing buildings.

The membership, organization, and responsibilities of the oversight group were not discussed in detail by the Advisory Council. Further study of how such an entity would operate, be organized, and whether or not it would be a completely new group or an existing group with expanded responsibilities needs to be further studied.

Conclusions

This report does not accomplish the original charge of Resolves 2001, Chapter 29. While that is a disappointment, the work completed (see Appendices) has shown that a building rehabilitation code is not a trivial effort. The Advisory Council:

- considered the efforts of other states to create “homegrown” rehabilitation codes;
- reviewed the efforts of two model code organizations to create rehabilitation codes;
- examined the order in which rehabilitation codes come in the evolution of building codes in a state;
- reviewed many specific structural standards in a rehabilitation code;
- met with representatives from public and private groups on handicap access requirements and fire code requirements;
- explored how existing laws and rules may interact with a rehabilitation code; and
- wrestled with the political issue of code organization loyalty.

The result has been primarily a policy primer necessary before the creation of a rehabilitation code can occur. This has been an important step in the progression toward a rehabilitation code. The recommendations outlined in the Executive Summary will take the process to the next step in code development, resulting in the creation of a code within approximately a year.

SPO recommends the passage of the following language to accomplish the recommendations of this report and looks forward to completing the creation of a model rehabilitation code.

Legislative Language to Accomplish the Recommendations of this Report

Sec. 1. Maine building code and rehabilitation code. That the State Planning Office shall develop a model Maine Building Code and Maine building rehabilitation code, referred to in this resolve as the "model codes." The purpose of the model codes is to encourage the uniformity and predictability in construction and rehabilitation for communities that chose to adopt a building code.

Sec. 2. Maine Building Rehabilitation Code Advisory Council. That the Maine Building Rehabilitation Code Advisory Council, referred to in this resolve as the "advisory council," is established to assist the State Planning Office in the development of the model code. The advisory council is composed of at least 17 members as follows:

1. The Director of the State Planning Office, or the director's designee;
2. The State Fire Marshal, or the fire marshal's designee;
3. The Commissioner of Economic and Community Development, or the commissioner's designee;
4. The Director of the Maine Historic Preservation Commission, or the director's designee; and
5. Thirteen members appointed by the State Planning Office, including:
 - A. Two representatives of the building trades who are directly involved or have experience in code setting or enforcement, including plumbers; electricians; heating, ventilation, air conditioning and refrigeration contractors; and boiler operators;
 - B. An architect practicing in the State whose practice involves a significant portion of rehabilitation projects;
 - C. A professional engineer;
 - D. A contractor specializing in rehabilitation construction;
 - E. Two representatives of municipal government;
 - F. A commercial or industrial building owner or developer;
 - G. A multifamily building owner or developer;
 - H. A local fire official;

I. A local building code official;

J. A certified interior designer; and

K. A representative of a statewide organization of building officials and inspectors; and be it further

The State Planning Office may appoint additional members to the Advisory Council as necessary to include all stakeholders.

Sec. 3. Duties. That the State Planning Office shall:

Implement the recommendations of the Report on the Development of a Model Building Rehabilitation Code, February 2002, completed by the State Planning Office for the Joint Standing Committee on Natural Resources. This will include creating a model building code, companion rehabilitation code, studying and making recommendations regarding the creation of an oversight group or person, and making recommendations about coordination of existing state laws and rules that regulate construction.

Sec. 4. Completion date; report. That the State Planning Office, with assistance from the advisory council, shall complete the development of the model codes by January 15, 2004.

The State Planning Office shall report to the Joint Standing Committee on Natural Resources by February 15, 2004 with the results of the model code development. The report must also include options to provide fiscal incentives for municipalities to adopt the model code and draft legislation necessary to implement any recommendations.'

Sec 5. Funding. There shall be \$40,000 allocated from the state's general fund for this project.

SUMMARY

This bill directs the State Planning Office, with assistance from the Advisory Council, to develop a model building code and rehabilitation code for Maine. The Office will also make recommendations regarding the creation of a new group or expansion of the duties of an existing group to coordinate the new code and existing laws. Finally, the Office will make recommendations on coordination and possible modification of existing laws and rules that regulate construction.